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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA

UNITED STATES OF AMERICA,)
)
) DOCKET NO. 5:19-CR-00095-D-1
Plaintiff,)
)
vs.)
)
DAVID SIERRA OROZCO,)
)
Defendant.)

TRANSCRIPT OF DETENTION HEARING
BEFORE MAGISTRATE JUDGE JAMES E. GATES
TUESDAY, MARCH 29, 2019; 2:04 PM
RALEIGH, NORTH CAROLINA

FOR THE PLAINTIFF:
United States Attorney's Office - EDNC
By: Melissa Belle Kessler, AUSA
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Raleigh, NC 27601

FOR THE DEFENDANT:
Federal Public Defender
By: Katherine E. Shea, Esq.
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ALSO PRESENT:
Houda El Idrissi, Spanish Interpreter

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I N D E X

VOIR

WITNESSES:	DIRECT	CROSS	REDIRECT	RECROSS	DIRE
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For the Government:

Mary Catherine Glenn Covington	4	7
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RULINGS:		PAGE	LINE
Government's motion for detention granted		15	10

Colloquy

1 P R O C E E D I N G S

2 THE CLERK: Court is now in session. Be seated and
3 come to order.

4 THE COURT: Madam Clerk, can you please swear the
5 interpreter?

6 SPANISH INTERPRETER, HOUDA EL IDRISSE, SWORN

7 THE CLERK: Thank you.

8 THE COURT: We're here this afternoon, folks, in the
9 case of United States v. David Sierra Orozco. And we're here
10 for a detention hearing.

11 I believe this is a presumption offense against Mr.
12 Orozco, meaning that the burden of production at the outset
13 rests with the defendant.

14 Ms. Shea, ma'am, be happy to hear any evidence that
15 the defendant wishes to present at this time.

16 MS. SHEA: Thank you, Your Honor.

17 We believe it's not a presumption offense.

18 THE COURT: Is that right? Let me check.

19 MS. SHEA: Your Honor, he's not charged with receipt,
20 unlike most of the offenders that we have. It's just
21 possession. So it's a 2252(a)(5)(A). I'm sorry, 2252(a)(5).
22 And that is not included in the presumption offenses.

23 THE COURT: Very good. If I misspoke on that, I
24 apologize.

25 Is that -- Ms. Kessler, is that your assessment?



Colloquy

1 MS. KESSLER: Your Honor, may I just have a moment to
2 look?

3 THE COURT: You may.

4 MS. KESSLER: Thank you. And this is under -- this
5 is under 3142(e)(3)(E). And it lists other child pornography
6 offenses, Your Honor. And I believe that most folks are often
7 charged with receipt, which does carry the presumption. But I
8 think possession only does not carry a rebuttable presumption.

9 Your Honor, looking at the statute, it appears to be
10 correct. Although, it's an interesting -- it's interesting
11 that it's written that way, because the offenses are very,
12 very similar. But I certainly concede that it does not list
13 possession of child pornography.

14 THE COURT: Very well. Well, let's proceed on that
15 basis, then.

16 Ms. Kessler, I'll be happy to hear the government's
17 evidence, then, at this time, ma'am.

18 MS. KESSLER: Your Honor, the government would call
19 HIS Agent Glenn Covington.

20 GOVERNMENT'S WITNESS, MARY CATHERINE GLENN COVINGTON, SWORN

21 THE CLERK: Thank you. Be seated.

22 Please state your name for the record.

23 THE WITNESS: It's Mary Catherine, C-A-T-H-E-R-I-N-E,
24 Glenn, G-L-E-N-N, Covington, C-O-V-I-N-G-T-O-N.

25 DIRECT EXAMINATION



Mary Catherine Glenn Covington - Direct

1 BY MS. KESSLER:

2 Q. Good afternoon. Can you tell the Court where you work?

3 A. I'm a special agent with Homeland Security Investigations
4 in Raleigh, North Carolina. I've been an agent for fifteen
5 years.

6 Q. And do you specialize in a -- certain type of cases?

7 A. Child exploitation and sex trafficking.

8 Q. And are you familiar with a case or investigation
9 involving David Sierra Orozco?

10 A. Yes.

11 Q. Can you tell the Court the facts surrounding that
12 investigation?

13 A. I was contacted by the Harnett County Sheriff's office
14 regarding Mr. Orozco and child pornography that was located on
15 some SD cards that were found while he was getting processed
16 into the Harnett County Jail.

17 Q. Okay. Can you tell us about -- why was he in the Harnett
18 County Jail?

19 A. He was pulled over by a Harnett County deputy for no
20 operator's license. And the deputy that pulled him over
21 brought a dog to, I guess, sniff the car. And at that point,
22 they got permission to look in the vehicle. And then they
23 found a false compartment in the dashboard, located some cash.
24 So at that point he was arrested by the sheriff's office.

25 Q. Was that 100,000 dollars in U.S. currency?



Mary Catherine Glenn Covington - Direct

1 A. Yes.

2 Q. Okay. So he was arrested and then what happened?

3 A. So he was arrested and then he was brought down to the
4 Harnett County Detention Center to be processed, booked into
5 the jail. When he was -- they were searching him, there was a
6 folded one-hundred-dollar bill that was taken out of his
7 pocket. The detention officer unfolded that bill and five SD
8 cards fell out.

9 At that point Mr. Orozco, he picked them up and shoved
10 them in his mouth. Tried to eat them or ingest them. The
11 detention officer was able to get three out. One was bitten,
12 halfway chewed, and the other one was swallowed.

13 Q. Okay. And of the SD cards that were recovered, were they
14 searched?

15 A. Yes. The Harnett County Sheriff's office, CID was
16 contacted and they got a search warrant. No, I'm sorry. They
17 looked at the SD cards. When they were looking at them they
18 noticed that there was child pornography. And then they got a
19 search warrant for -- to look at the remainder of them,
20 because they located child pornography. So a search -- state
21 search warrant was found -- or was executed. And they did a
22 forensic examination and found child pornography on the SD
23 cards.

24 Q. Ultimately, how much child pornography was found?

25 A. On the 32-gigabyte micro SD card, they located fourteen



Mary Catherine Glenn Covington - Direct

1 videos. And on the 8-gigabyte SD card, they located three
2 images and 181 videos.

3 Q. And just for clarity for the Court can you describe sort
4 of what type of images were found?

5 A. On the 32-gig micro SD card it includes a young male
6 under the age of ten years old having sexual intercourse with
7 a chicken. On the 8-gigabyte SD card is an infant toddler,
8 and adult male was rubbing, attempting to insert his penis
9 into the infant toddler female. Which would -- which
10 classified it as an S&M video.

11 Q. Okay. And by S&M you mean a video that depicts
12 sadomasochistic actions?

13 A. Yes.

14 Q. Okay.

15 MS. KESSLER: Your Honor, I have no further
16 questions.

17 THE COURT: Ms. Shea, ma'am.

18 MS. SHEA: Yes, Your Honor. Thank you.

19 CROSS-EXAMINATION

20 BY MS. SHEA:

21 Q. You mentioned -- I'm sorry, good afternoon, Agt.
22 Covington.

23 You mentioned that he was originally pulled over by law
24 enforcement in Harnett County. And that he was charged with
25 no operator's license. Is that what you said?



Mary Catherine Glenn Covington - Cross

1 A. Yes.

2 Q. Was he charged with anything else?

3 A. After they found the child pornography on the SD cards he
4 was charged with third degree exploitation of a minor, three
5 counts.

6 Q. Do you know why they originally pulled him over?

7 A. Let me check.

8 I know it was a traffic stop.

9 Q. Do you know if they had any reason to believe that he had
10 no operator's license before they pulled him over?

11 A. I do not know. I didn't.

12 Q. Okay. Do you know why he got the dog to sniff the car?

13 A. I do not know.

14 Q. Do you know if the officer spoke Spanish?

15 A. No. I do not know.

16 Q. Do you know whether my client speaks any English at all?

17 A. I'm sorry?

18 Q. Do you know whether my client speaks any English at all?

19 A. I don't think he does. I think he only strictly speaks
20 Spanish.

21 Q. Yeah. Not even like a little bit of conversational
22 English. Is that your understanding?

23 A. That's my understanding.

24 Q. Do you know if it was one officer at the scene or
25 multiple officers?



Mary Catherine Glenn Covington - Cross

1 A. I think originally it was one and then multiple offices
2 showed up.

3 Q. What kind of car was it?

4 A. A Lexus.

5 Q. Do you know who it was registered to?

6 I'll move on. Do you know if there was dashcam video?

7 A. I don't know.

8 Q. Do you know if there was a dashcam video?

9 A. Yeah, I don't know if Harnett County has that or not.

10 Q. The cash that you mentioned, there was no crime that was
11 charged with respect to having cash in the car, right?

12 A. To my knowledge, I -- I don't know.

13 Q. Is it your understanding that he was pretty cooperative
14 throughout this exchange?

15 A. Reading the report, it seemed like he was cooperative.

16 Q. You mentioned that they got permission to search the car.
17 Do you know how that was obtained given his lack of English-
18 speaking ability?

19 A. No, I do not know.

20 Q. Prior to this arrest in July of 2017 was Mr. Orozco on
21 anyone's radar?

22 A. I do not believe so.

23 Q. Prior to July 2017, he's never been charged with anything
24 else like this that you know of, right?

25 A. That I know of, no.

Mary Catherine Glenn Covington - Cross

1 Q. In your investigation, were you able to determine where
2 the SD cards came from?

3 A. The SD cards came from his pocket on his person that he
4 put on the counter when he was getting processed.

5 Q. I meant anything kind of descriptive about the SD cards,
6 like if they were purchased in a certain place?

7 A. No.

8 Q. Did he ever give any statements to law enforcement
9 regarding the SD cards?

10 A. I don't believe so.

11 Q. Did he ever give any statements about the money?

12 A. Not that I'm -- not that I'm aware of because that was a
13 separate investigation.

14 MS. SHEA: Thank you, Your Honor. Those are my
15 questions.

16 THE COURT: Thank you, ma'am.

17 Ms. Kessler?

18 MS. KESSLER: No further questions, Your Honor.

19 Thank you.

20 THE COURT: Very well. Thank you, ma'am.

21 Is that the evidence from the government?

22 MS. KESSLER: Yes, Your Honor.

23 THE COURT: Very well, thank you. I have reviewed
24 the pre-trial services report.

25 Ms. Shea, any evidence from the defendant?



Colloquy

1 MS. SHEA: No, Your Honor.

2 THE COURT: Very well. Ms. Shea, you want to lead
3 off with your argument, then?

4 MS. SHEA: Yes, Your Honor.

5 This is a very unusual child pornography case, Your
6 Honor. Definitely unlike any of the ones that I've had
7 before. I mean, it is sort of this isolated moment where he
8 gets somehow on the radar screen, is arrested and found with
9 these cards.

10 I will say that in terms of the weight of the
11 evidence against the person, I think that they're -- aside
12 from trying to swallow them, there's -- and the fact that
13 they're in this hundred-dollar bill, I don't think that there
14 is very strong evidence about where he got them from, whether
15 he looked at them, whether he was aware of the contents. So I
16 think just in terms of the weight of the evidence, I think
17 that it is -- that it's interesting -- an interesting case.
18 And I think that there could be issues with the evidence
19 against him.

20 I also think there could be issues in terms of the
21 lawfulness of the search and stop, but I understand that
22 that's for another day.

23 Your Honor, he is a person that has absolutely no
24 criminal history. He's never been arrested before. We would
25 ask that you consider some other kind of other placement, like

Colloquy

1 a halfway house, instead of straight detention. We understand
2 that he doesn't have family in the area to go -- to put on
3 third-party custodian today, but we would ask that you
4 consider something else instead of straight detention.

5 THE COURT: Very well. Thank you, ma'am.

6 Ms. Kessler.

7 MS. KESSLER: Your Honor, the government would argue
8 that the only appropriate course of action in this case is
9 detention.

10 First, speaking to the crime itself, the crime that
11 was charged here. Mr. Orozco was clearly was possession of
12 what was some very disturbing images of child pornography.
13 Because Mr. Orozco attempted to eat the evidence, it certainly
14 shows his knowledge of guilt, or knowledge that there was
15 content on those cards that law enforcement -- that he did not
16 want law enforcement to see. But because of his actions, law
17 enforcement was only able to look at fewer than half of the SD
18 cards that were on Mr. Orozco's person. Which means it may
19 only represent a small fraction of the evidence that was in
20 Mr. Orozco's possession.

21 But it is clear from the evidence that was recovered
22 that it is child pornography. It's, as Agt. Covington
23 describes, some particularly heinous images of child
24 pornography.

25 So certainly in this case, the weight of the evidence

Colloquy

1 that that pornography was in his possession, Mr. Orozco at the
2 very least knew it was illegal contraband, is certainly
3 overwhelming.

4 But I think the more operative point, Your Honor, is
5 that there is no combination -- conditions or combinations of
6 conditions in this case that will ensure Mr. Orozco's
7 appearance in court. Part of that is based on the fact that
8 he is in this country illegally. He has no ties. We have no
9 information about family, certainly no third-party custodians,
10 no history of employment. It just seems that Mr. Orozco is
11 not -- has succeeded for years on not being on anyone's radar.
12 Has left no mark in this community. And therefore, has no
13 ties to this community and presents a serious risk of flight.

14 Because these crimes against minors are serious cases
15 and there's so much in this case that isn't known, certainly
16 it is not a matter of course of the government to indict these
17 kinds of cases, just simple possession cases, but the facts
18 here are very strange and suspicious. That Mr. Orozco was
19 pulled over without a driver's license. That a hundred grand
20 in currency was found hidden inside of his car. And that even
21 though the government hasn't, in its investigation -- or law
22 enforcement, in its investigation, hasn't been able to find
23 what that money is tied to, it certainly is concerning. The
24 facts of this case are concerning. And coupled with the fact
25 that there is no information as to where Mr. Orozco might work

Colloquy

1 or be employed or reside if he were released, I think all of
2 those facts weigh in favor of his detention. Thank you, Your
3 Honor.

4 THE COURT: Now is the government -- just so I
5 understand clearly. I understand the government is seeking
6 detention on the basis of flight risk. Is it also seeking
7 detention on the basis of risk of danger?

8 MS. KESSLER: Certainly, Your Honor. It's the
9 position of the government that anyone who is engaged in child
10 pornography in crimes against children present an ongoing
11 threat against the population. Certainly, that's part of the
12 reason why a presumption exists in most of these cases.

13 And I would argue to Your Honor, although this is not
14 a receipt of child pornography, the only reason that it's not
15 is because the evidence exists in such a way that it is
16 impossible for law enforcement to figure out how it was
17 received or how it ended up on those disks. But still,
18 certainly, Mr. Orozco was in possession of child pornography.

19 That is an ongoing crime. Every time an image of
20 child pornography is disseminated, it's additional
21 victimization of those children who are depicted in those
22 images. And it is an ongoing harm to the community, and
23 certainly congress views it in that light. So for the
24 protection of the community, Your Honor, we would also argue
25 for detention in this case.

Colloquy

1 THE COURT: Okay, very well.

2 MS. KESSLER: Thank you.

3 THE COURT: Thank you.

4 Ms. Shea, any final thoughts, ma'am?

5 MS. SHEA: No, thank you.

6 THE COURT: Very well.

7 Very well. Based on the record developed for me, and
8 that would include the evidence as well as the argument, I do
9 believe the law requires me to allow the government's motion
10 for detention.

11 I do so find that the government has shown by a
12 preponderance of the evidence that no condition or combination
13 of conditions would reasonably assure the appearance of the
14 defendant as required. And the clear and convincing evidence,
15 there's no condition or combination of conditions, that would
16 reasonably assure the safety of any other person in the
17 community if Mr. Orozco were to be released.

18 So my ruling does not affect the presumption of
19 innocence that you will continue to enjoy at the trial in your
20 case. But a motion such as this, the Court is required to
21 consider certain specific factors. And I'll note again for
22 the record, this is not a presumption case. So no presumption
23 of detention is included in the Court's analysis.

24 One factor that is included is the weight of the
25 evidence. And I believe the government has shown it has a

Colloquy

1 strong case against you. And that would include the evidence
2 that these materials, these SD cards, were in your pocket, and
3 then placed -- you placed them in your mouth. So there's
4 really no question as to your possession of them.

5 And the review of the content indicated, based on the
6 record before me here, that they did contain child
7 pornography. And that given the nature of them, they
8 were -- they're associated with use of the computer, given the
9 nature of them. So I believe the government has shown it has
10 a strong case against you. Certainly enough to obtain a
11 conviction.

12 Regarding the nature and circumstances of the
13 offense, the offense involves child pornography, of course,
14 and that represents a -- I think the characterization is
15 correct, essentially an ongoing harm to the children who are
16 depicted in materials such as that.

17 Your conduct at the time, pulling them out of your
18 pocket and attempting to swallowing them, ending up chewing
19 one of them -- swallowing one and then the others were
20 available to law enforcement. But certainly, I agree it does
21 indicate knowledge that it's material that you did not want
22 law enforcement to have access to, so you knew it was wrong.
23 But it also involved destruction of evidence, which is
24 concerning.

25 I would add that you do face, if you were to be

Colloquy

1 convicted -- at least by statute, you face an extended term of
2 incarceration. I've not done a sentencing guidelines
3 analysis, but this is a felony offense that carries a
4 significant term of incarceration. I believe, on the facts
5 alleged, up to twenty years of incarceration.

6 And I mention that in connection particularly with
7 the flight risk. Because the prospect of having to serve
8 significant prison time would certainly give any rational
9 person the strong incentive to flee.

10 Regarding the history and characteristics, it is a
11 ameliorative fact or mitigating fact here that you do not have
12 a criminal history, and I have considered that. On the other
13 hand, according to this record, you are illegally in the
14 United States and subject to deportation. And that presents
15 you with the prospect of -- one option would be to be released
16 and simply disappear in the community. As we know just from
17 everyday experience, that can be done in the United States at
18 the current time, or not flee, but defend this action, appear
19 in court and so forth, but then face the prospect of serving
20 the potentially lengthy term of incarceration and then being
21 deported. So that dynamic, those two options, would give any
22 -- again, a rational person an incentive to flee.

23 You're apparently from Mexico so you can be back in
24 your home country simply by crossing a border. But flight
25 doesn't necessarily involve leaving the country or even the

Colloquy

1 community, because we know from, again, common experience that
2 folks can simply melt into the background, so to speak, and
3 remain undetected.

4 I think danger comes into play here, because if
5 you're not being supervised, then there's clearly a risk, it
6 seems to me, of continued involvement with child pornography.
7 Hence, the finding with respect to dangerousness.

8 And another factor is actually the nature and
9 seriousness of the danger posed by your release. And that
10 would be continued involvement with the child pornography.
11 And any child pornography is disturbing. Here, some of this
12 material involved -- at least one of them involved a toddler,
13 so particularly defenseless folks involved there.

14 No third-party custodian was presented. So there's
15 no issue of evaluating a third-party custodian for the
16 suitability of that person's service as such.

17 I considered the other points made by counsel of a
18 mitigating nature, but believe that, for the reasons stated,
19 detention is required by law here.

20 Ms. Shea, do you have anything further on behalf of
21 Mr. Orozco?

22 MS. SHEA: No, sir.

23 THE COURT: Thank you, ma'am.

24 Anything further, Ms. Kessler, on behalf of the
25 government?

Colloquy

1 MS. KESSLER: No, Your Honor. Thank you.

2 THE COURT: I remand the defendant to the custody of
3 the United States Marshall.

4 The Court will be in recess.

5 THE COURT OFFICER: All rise. The court stands in --
6 (ends mid-sentence).

7 (Court is adjourned)

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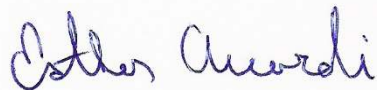
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Dated this 1st day of December, 2020.



/s/

ESTHER ACCARDI, CET-485

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